



The Commonwealth of Massachusetts  
Office of the Attorney General  
One Ashburton Place  
Boston, Massachusetts 02108

2016 AUG 23 PM 1:28

NANTUCKET  
TOWN CLERK

## OPEN MEETING LAW COMPLAINT FORM

### Instructions for completing the Open Meeting Law Complaint Form

The Office of the Attorney General's Division of Open Government is responsible for interpreting and enforcing the Open Meeting Law. Pursuant to G.L. c. 30A, §23, the Open Meeting Law requires that complaints must first be filed with the public body that is alleged to have committed the violation, prior to filing a complaint with the Attorney General.

The complaint must be filed with the public body within 30 days of the alleged violation, or if the alleged Open Meeting Law violation could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered. The complaint must set forth the circumstances which constitute the alleged violation, giving the public body an opportunity to remedy the alleged violation.

Please complete the entire form, providing as much information as possible, to assist the public body in responding to your complaint. The Division of Open Government will not, and public bodies are not required to, investigate anonymous complaints. You may attach additional materials to your complaint if necessary. The public body may request additional information if necessary.

For complaints alleging a violation of the Open Meeting Law by a local public body, you must file with the public body and file a copy with the clerk of the city or town where the alleged violation occurred. For complaints alleging a violation by a county, regional or state public body, you must file with the chair of the public body.

If you are not satisfied with the action taken by the public body in response to your complaint, you may file a copy of your complaint with the Attorney General's Office 30 days after filing your complaint with the public body. The Attorney General's Office may decline to investigate a complaint that is filed with the Attorney General's Office more than 90 days after the alleged OML violation, unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.

The complaint must include this form and any documents relevant to the alleged violation. A complaint may be filed either by mail, by electronic mail, or by hand:

Office of the Attorney General  
Division of Open Government  
One Ashburton Place  
Boston, MA 02108  
OpenMeeting@State.MA.US



## OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

### Your Contact Information:

First Name: LINDA Last Name: WILLIAMS

Address: PO BOX 1446

City: NANTUCKET State: MA Zip Code: 02554

Phone Number: 5082210432 Ext.

Email: CZARINALINDA@COMCAST.NET

Organization or Media Affiliation (if any):

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

☒ Individual ☐ Organization ☐ Media

### Public Body that is the subject of this complaint:

☒ City/Town ☐ County ☐ Regional/District ☐ State

Name of Public Body (including city/town, county or region, if applicable): NANTUCKET HISTORIC DISTRICT COMMISSION

Specific person(s), if any, you allege committed the violation: KRISTINE GLAZER, RAY POHL, DIANE COOMBS, ABBY CAMP, JOHN MCLAUGHLIN, MATTHEW KUHNERT, VALLORIE OLIVER

Date of alleged violation: MULTIPLE

## Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

PLEASE SEE ATTACHED ADDENDUM FOR DATES AND VIOLATIONS

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

PLEASE SEE ATTACHED ADDENDUM FOR DATES AND VIOLATIONS AND PROPOSED ACTIONS REQUESTED

## Review, sign, and submit your complaint

### **I. Disclosure of Your Complaint.**

**Public Record.** Under most circumstances, your complaint, and any documents submitted with your complaint, will be considered a public record and available to any member of the public upon request. In response to such a request, the AGO generally will not disclose your contact information.

### **II. Consulting With a Private Attorney.**

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

### **III. Submit Your Complaint to the Public Body.**

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

For Use By Public Body

For Use By AGO

Date Received by Public Body:

Date Received by AGO:

## Open Meeting Law Violations

After reviewing the video recordings of numerous meetings over the past four months during the week of August 15, 2016, I have become aware of multiple Open Meeting Law (“OML”) violations caused by the actions of the Nantucket Historic District Commission (“HDC”) members. Some of these violations may be due to a lack of thorough understanding of the OML, despite having taken the on-line training and presented with repeated advice of Town Counsel and past chairmen on compliance; but others are obvious, intentional and deliberate actions that are in conflict with the OML. The purpose of the OML is to “ensure transparency in the deliberations on which public policy is based” (Attorney General’s OML Guide, page 2). Chairman Glazer of the HDC has preached transparency. However, it would seem as though that only applies to others dealing with the HDC and not the HDC itself.

Although the OML requires complaints to be filed within 30 days of the actual violation, I only became aware of the extent of the violations contained herein recently. I felt that they were indicative of a chronic pattern of abuse of the OML and all matters were important to include. The statute states the following:

Individuals who allege a violation of the Open Meeting Law must first file a complaint **with the public body** alleged to have violated the OML. The complaint must be filed within 30 days of the date of the violation, or the date the complainant could reasonably have known of the violation.

Upon further research, the following is the result and grouped into three categories below:

### **1. Adequate Notice of Agenda Items:**

The OML requires that the list of topics (i.e., agenda items) “must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting” (Attorney General’s OML Guide, page 7). The following are all failures to meet this standard:

- a. On Tuesday, July 12, 2016, the posted agenda listed 48 Orange Street, 40 Somerset Lane, 11 Fayette Street under the “Other Business” section of the agenda at the end of the meeting. There was no indication what the purpose was for any of the properties

listed or what action or votes were to be taken. The public was deprived of due notice as well as the property owners. Votes were taken to send letters to 40 Somerset Lane and 11 Fayette Street after extensive discussions. The votes taken did not contain any specifics on the details of the letters, no enforcement vote was taken and 40 Somerset Lane is an active application that should have been taken up under "Other Business".

- b. On Tuesday, August 2, 2016, there was an agenda item about sending a letter to the Board of Selectmen concerning staffing and PLUS issues. There was no discussion about the matter, content, substance or details of the letter at this public hearing nor comments asked for from the public, just a vote to draft a letter. (They were clearly trying to clean up the off the record discussion held on July 26, 2016 after adjournment, see "c" under "Deliberations".) The agenda did not contain specific information about the purpose of the discussion or that a vote was to be taken. It needs to be noted that Member Ray Pohl was not present at this meeting.
- c. On Tuesday, August 16, 2016 agenda, again there were several items of "Other Business" without specificity or action to be taken. Property at 3 Old Farm Road was listed with no indication of the purpose of the discussion and without the property owner being notified about a supposed grading issue. The entire subdivision was discussed without adequate notice as well. Subsequently, there was also a discussion about HDC staffing, along with job descriptions. The latter items were not on the agenda at all. Alternate member Kuhnert passed around a job description from another municipality but did not provide said document for the record until August 22, 2016. All documents discussed during a deliberation are required to be provided and listed as part of the permanent meeting record.

NOTE: A review of the videos and agendas over the past four months continuing up to the present indicates a recurring OML violation. On the agendas, and the HDC meets once and at times twice as week, under "Other Business" items are



simply listed. No explanation as to what the actions are to take place such as votes, discussions, letters, violations, just simply the addresses or an item.

Property owners are not contacted that there will be a discussion and the public is not on notice as to why those items are listed on the agendas depriving the public of due notice. Extensive discussions are undertaken at times resulting in votes that also do not contain specifics. This is in fact a violation of the requirements for notice. If there is a document to be discussed that document has to be in the posted packet or available at the office for review prior to the posted meeting.

In addition, agendas are routinely approved without changes, only to subsequently have all sorts of changes made without reopening the agenda by a vote and then voting to specifically change specific items on the agenda. This deprives members of the public from full notice that a matter may be taken out of order after they hear that the agenda was approved as submitted.

## **2. Deliberations Outside of a Public Meeting:**

- a. On Wednesday, July 13, 2016 at approximately 1:30 PM three members, Chairman Glazer, Camp and Oliver, constituting a quorum of the HDC (with five members being a full board), were witnessed to be meeting in the conference room of the Town PLUS office at 2 Fairgrounds Road, Nantucket, MA. They were reviewing applications that were to be on the agenda for Tuesday, July 19, 2016. They were overheard discussing the merits of the applications as well. When it was brought to their attention that this activity constituted a deliberation under the OML, they did not acknowledge it, and tried to justify their actions by saying they were "just reviewing files". At approximately 2:30 PM instead of the meeting breaking up, Chairman Glazer, moved to another nearby room and the other two members, Camp and Oliver, stayed in the conference room continuing to have contact with each other while reviewing files.

Any discussion about the merits and contents of an application outside the properly posted public meeting by a quorum is a violation of the OML and splitting into separate rooms while still maintaining contact is a deliberate action to circumvent the regulations. I note that on this

afternoon, PLUS staff provided those violating members with a copy of the definition of “deliberations” from the OML Guide. According to office staff this is not the first time this has happened and indicates a persistent disregard of the OML statute.

- b. On Tuesday, July 19, 2016, there was reportedly a quorum still present after adjournment of a regularly posted public hearing. After the video and audio recording devices were turned off, an extensive discussion occurred about proposed staffing changes. A quorum of the HDC cannot stay constituted to discuss HDC business after adjournment. This was a deliberate violation since the discussion occurred after adjournment and after the recording devices were deliberately shut off.
- c. On Tuesday, July 26, 2016 it was clear at the end of the meeting that certain members wanted to discuss something with the rest of the members off the record yet again. Ms. Coombs can be heard saying she “had something to discuss” and asked that the tape be shut off. The Chairman can then be heard asking for the tape to be “turned off first”. Ray Pohl also stated that they should “go off-line”. It is clear that a quorum of the Commission, with six members still seated at the table, was present to discuss a matter after adjournment, deliberately with no records kept. The following day a request for legal services was received by PLUS administration without it being on any agenda and without a vote of the Commission at a public hearing. While a request for legal services without a vote of the Commission is not in itself a violation of the OML, it is against a long standing policy of the Commission. It is clear that sending a letter to the Board of Selectmen concerning staffing and PLUS issues had been the topic of discussion after adjournment. Further, two staff members in attendance at the meeting and after adjournment confirmed that an illegal discussion about a letter to the BOS requesting to have the HDC staffing removed from PLUS occurred off-the-record.
- d. On Tuesday, August 2, 2016, prior to opening the meeting, and while a quorum of members was present, Member Diane Coombs started talking about 11 Fayette Street (to which she is a direct abutter and had

recused herself from the matter from its inception in 2015). This property is currently the subject of a questionable enforcement action. The Chairman has the responsibility to control the meeting and should have stopped the conversation immediately to protect Ms. Coombs and the HDC. She did not. The conversation ended when the meeting was called to order a few minutes later. Deliberations of a town board or commission can only take place if the subject matter is on the agenda or was not reasonably anticipated by the Chair and so stated. This was not the case as the discussion took place prior to the meeting being called to order. Chairman Glazer is in full knowledge of this prohibition and the need for Ms. Coombs to step away from the table and state clearly that she is an abutter, not to mention having to have it placed on an agenda for discussion first.

- e. On Tuesday, August 9, 2016 the letter to the BOS as noted above was on the agenda with no stated purpose and again no substantive discussion of the merits, details, language etc. was undertaken at the meeting. The letter was not provided in advance in the posted packet on line or available in the office for public review though clearly drafted prior to the meeting. When staff appropriately asked to have a copy to send out to the members, Chairman Glazer refused to transmit it to him and said he would have to “wait until the meeting”. It is clear from the video that members were provided with a copy prior to the meeting as some had their copy at the table and stated that they did not need another copy. It is also clear that the draft letter was not made available to the public and staff in order to shield it from public review and comment. Tellingly, at this public hearing Chairman Glazer stated clearly on the video that she thought that she *“took into account what everyone said”* (italics added for emphasis) when drafting the letter. It had to have come directly from the Chairman and comments made directly to her deliberately bypassing staff. In addition, when asked “what version” of the letter was being handed out at the table the Chairman stated clearly that *“this is the same letter”* (italics added for emphasis). This clearly indicates that the Commission Members had discussed and seen this “same letter” prior to the meeting and outside of the public meeting



venue. No public comment was asked for at this public hearing either nor was a copy of the letter provided to the public in attendance. No details of any letter had been discussed at either the July 26, 28, August 2, public hearings and it was not on any agenda to review a draft. When and how did the comments come to Chairman Glazer? They did not come through staff. It is also clear that discussion by email outside of the meeting created a serial meeting and deliberate and intentional violation of the OML. There was absolutely no discussion about the contents or details of the letter at this meeting prior to voting to send it.

On another issue regarding the adoption of the letter process, under the HDC Act it is clearly stated that associate members (herein called alternates), are to serve solely at the discretion of and *activated* by the Chairman. Traditionally they do not make motions or interrupt the proceedings unless they are filling in for a missing full member. In any case, the alternates have *never* voted on or made motions related to Commission policy or votes for officers etc. They are elected full members. At this meeting, alternate Oliver made an out of order motion to move the vote on the letter from the end to the beginning of the meeting. This caused an out of order subsequent vote. All five elected regular voting members were present and as such the only ones that could make such a motion and take such a vote, not a vote of alternates for any reason. Oliver was not activated to fill a vacancy on the regular Commission and thus ineligible to participate in anything other than an open discussion. The Chairman should not have allowed the motion to be put forward by an alternate for any reason and has now thrown the validity of the motion to send the letter into serious question. In addition, it would appear that all seven members present voted when only legally five regular members can vote and should have.

The agenda itself simply states "HDC letter to Board of Selectmen", not adoption of, discussion of, or any specifics thus depriving the public of any information or ability to review ahead of time. If the HDC is referring to a specific letter and a vote is to take place, none of which was specified on that agenda, the document **MUST** be made part of the official record. The public and staff has a *right* to the letter if a request is

made. Staff made that request and it was denied. It was an important matter that was listed under "Other Business" at the end of the meeting as posted. Someone may have wanted to be there for that discussion. Pursuant to an illegal motion and vote, it was deliberately moved up to the beginning of the meeting to throw the public and other interested parties off.

In conclusion: Commission Members cannot discuss material matters of a letter prepared by the Chairman or anyone else outside of the posted public hearing. A copy of the letter should have been disseminated by staff and comments made to staff and then included in the packet. If the contents of the letter were discussed by email and provided comments directly to the Chairman outside of the meeting it is a deliberate violation of the OML, done to shield the matter from the public and other interested parties and to eliminate public comment at the public hearing.

3. **Serial Meetings:**

- a. Per the Open Meeting Law and *Robert's Rules of Order* under which the HDC has always operated, the Chairman alone sets the agenda. An agenda is not set by an email vote of the membership, thus constituting a "rolling meeting", a violation of the OML. On July 21/22, 2016 Chairman Glazer ordered staff to email the entire Commission and vote by email as to whether the White Heron Theater and Richard Travaglione applications could be heard on the Old Business agenda for Tuesday, July 28, 2016 as they were technically new business items. This was done, with email support evidence obtained where at least two members responded stating they were okay with it and were in favor ahead of the public hearing. This constitutes yet another violation of the OML. The reason the chairman sets the agenda is to avoid this serial meeting issue.

In addition, Chairman Glazer had recused from the White Heron Theater matter and yet set that matter on the agenda and in fact actively sought out Commissioner comments related to whether it should go on the agenda or not, then spoke against the matter when it came up at the July 26, 2016 meeting for approval. This matter

should have been set on the agenda by the vice-chairman and Chairman Glazer should have kept her hands clean.

4. As to whether these repeated actions are deliberate and intentional violations, it is argued herein, that these actions are deliberate and intentional. This Commission Membership has been ordered to take the OML/Ethics training on a regular basis, warned by former chairmen, particularly Chairman Williams, and had the OML explained to them multiple times by both PLUS administration and Town Counsel at numerous organizational meetings over several years and as recently as March 2016. A different composition of the HDC membership has been cited in the past for such behavior and at least two of the members are of long standing, one the subject of previous OML violations. It has to be noted that Town Counsel has offered to visit with the HDC over the past few months, but Chairman Glazer has not scheduled a time. It would appear that the HDC does not want to hear from Town Counsel or adhere to the same OML standards that all other Town entities have to adhere to. Ms. Coombs stated that the town "did not want to pay him" (Town Counsel) to come down. Chairman Glazer did not offer any correction here.

6. **Conclusion:**

To address the chronic violations contained herein, I suggest the following:

1. HDC members should be compelled to immediately comply with the OML in full;
2. HDC members should be ordered to complete mandatory *in-person* training sessions immediately;
3. HDC actions taken at the meetings should be nullified and they should be required to properly re-notice (several letters were voted to be sent) and provide all information shared or discussed or otherwise the product of their serial meetings whether by email, phone or in person;
4. At a minimum, a fine of \$1000 shall be levied against the HDC as a whole or per member, either for the intentional violations occurring on at least July 26, 2016 and as appropriate in the opinion of the Attorney General for the other violations individually; and
5. Any other action that the Attorney General finds to be appropriate to enforce the provisions of the OML considering the chronic nature of the violations exhibited by this particular membership.

Linda F. Williams 8/23/2016

## **DELIBERATIONS:**

The Open Meeting Law defines deliberation as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction... when these materials are distributed, no member of the public body expresses an opinion on matters within the body’s jurisdiction...A quorum is usually a simple majority of the members of a public body. Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a serial manner in order to evade the application of the law...Note that the expression of an opinion on matters within the body’s jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For example, if a member of a public body sends an email to a quorum of a public body expressing her opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds.

## **When is a violation of the law considered "intentional"?**

Upon finding a violation of the Open Meeting Law, the Attorney General may impose a civil penalty upon a public body of not more than \$1,000 for each intentional violation. G.L. c. 30A, § 23(c)(4). An “intentional violation” is an act or omission by a public body or public body member in knowing violation of the Open Meeting Law. G.L. c. 30A, § 18. In determining whether a violation was intentional, the Attorney General will consider, among other things, whether the public body or public body member 1) acted with specific intent to violate the law; 2) acted with deliberate ignorance of the law’s requirements; or 3) had been previously informed by a court decision or advised by the Attorney General that the conduct at issue violated the Open Meeting Law. 940 CMR 29.02. If a public body or public body member made a good faith attempt at compliance with the law but was reasonably mistaken about its requirements or, after full disclosure, acted in good faith compliance with the advice of counsel, its conduct will not be considered an intentional violation of the Law. G.L. c. 30A, § 23(g); 940 CMR 29.02.